

**EQUITABLE REAL ESTATE  
INVESTMENT MANAGEMENT INC.**



Douglas A. Tibbetts  
President and  
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April 11, 1996

**RECEIVED**

**APR 11 1996**

**FCC MAIL ROOM**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Preemption of Non-governmental Restrictions on Satellite Earth Stations  
IB Docket No. 95-59

Dear Mr. Caton:

**DOCKET FILE COPY ORIGINAL**

I am writing to respond to the FCC's Report and Order and Further Notice of Proposed Rulemaking released on March 11, 1996, regarding preemption of certain local regulation of satellite earth station antennas, and proposing to prohibit enforcement of non-governmental restrictions on such antennas that are less than one meter in diameter (the "FNPRM"). We enclose six (6) copies of this letter, in addition to this original.

**BACKGROUND**

**Equitable Real Estate Investment Management, Inc.** is in the commercial and residential real estate business. We currently manage more than \$16.8 billion in assets represented by more than 1,040 properties totaling 238 million square feet. With more than eleven regional offices, Equitable Real Estate manages office, retail, industrial, hotel and apartment properties for more than 300 national and international clients.

**PROPERTY RIGHTS**

We are concerned that the proposed rule prohibiting enforcement of non-governmental restrictions will adversely affect the conduct of our business without justification and needlessly raise additional legal issues.

We question whether the Commission has the authority to require us to allow the physical invasion of our property in this way. It is imperative that we retain the authority to control the use of our property, for several reasons.

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## **MARKETABILITY**

The FNPRM incorrectly states that "non-governmental restrictions would appear to be directed to aesthetic considerations." It is certainly true that aesthetic considerations play a part, but it is by no means the only concern. Nor are aesthetic considerations trivial -- the appearance of a building directly affects its marketability.

People generally prefer to live and work in attractive buildings, and the sight of hundreds of satellite antennas bolted to the outside of apartment units would not be appealing to present and future tenants. Thus, in the apartment market, aesthetic considerations are actually economic considerations.

## **STRUCTURAL AND SAFETY CONDITIONS**

The indiscriminate placement of antennas on the exterior of our buildings may also create structural hazards. For instance, the weight or wind resistance of an antenna installed improperly on a balcony railing may weaken the railing, thus creating maintenance problems and -- more importantly -- a hazard to the safety of tenants, building employees, and passers-by. Antennas mounted directly on a wall will require the drilling of holes; if improperly sealed, water seeping into the holes may create structural deficiencies. There are many mechanisms that could cause such damage, including expansion upon freezing, corrosion of metal mounting elements, seepage into the interior of a building, or weakening of concrete through chemical reaction with substances carried in by the water. All of these possibilities will create new maintenance and repair costs that the owners will have to pay, plus the safety hazards previously referred to.

We are equally concerned with the mounting of additional dishes on our roofs because the same maintenance problems exist as with the exterior of the building. In many cases our roofs are already at their limits with regard to the wind and structural loads that exist due to antennas and dishes already in place.

Increased foot traffic is yet another concern for our roofs. Roof leaks in a retail mall or apartment building are the "kiss of death" just as elevator problems are in commercial office buildings. Allowing anyone and everyone who wishes to install dishes on our roofs will severely affect the integrity of our roofs as well as increase our risk in terms of security.

## **MANAGEMENT**

As with commercial office building cabling systems, there is the question of who will be expected to manage the day-to-day issues i.e., roof access, signal interference, maintenance, security, and inspections. Building management will be expected to perform this function, and we believe that building ownership and management should have the right to control and charge for these additional services as appropriate.

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### **TENANT FRUSTRATION**

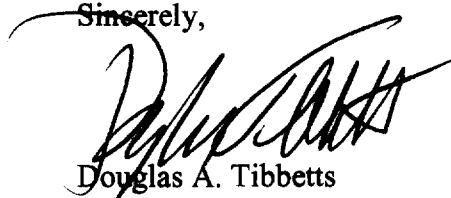
The technical limitations of satellite technology will create management problems because not all of our tenants may be able to receive certain services. When tenants on the south side of a building start subscribing to DBS, but tenants on the north side cannot because there is no place to position an antenna to receive the signal, we will have to deal with the complaints. We will be powerless to address the situation, but will suffer increased costs as angry tenants and tenants place additional demands on management or move to other buildings.

### **CONCLUSION**

We urge the FCC to avoid interfering in our relationships with our tenants. All of the potential problems we cite will affect our bottom line and our property rights.

Thank you for your attention to our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Tibbetts", is written over the printed name. The signature is stylized with a large initial "D" and a long horizontal stroke.

Douglas A. Tibbetts

Attachments: Six copies of this original